

**MINUTES OF THE
SENATE JUDICIAL CONFIRMATION COMMITTEE**
Thursday, January 7, 2010 – 9:00 a.m. – Room 450 State Capitol

Members Present:

Sen. Scott K. Jenkins, Chair
Sen. Jon J. Greiner
Sen. Lyle W. Hillyard
Sen. Karen Mayne
President Michael G. Waddoups

Staff Present:

Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Mr. Jerry D. Howe, Policy Analyst
Ms. Amanda K. Majers, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Jenkins called the meeting to order at 9:04 a.m. The Committee introduced themselves to the candidate and the audience. The candidate introduced his family, friends, and colleagues to the Committee.

MOTION: Sen. Hillyard moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Mr. Thomas L. Low. The motion passed unanimously.

MOTION: Sen. Hillyard moved to open the meeting. The motion passed unanimously.

2. Interview of Mr. Thomas L. Low

Mr. Low was placed under oath by Mr. Howe. Mr. Low spoke about his personal and professional background. He related to the Committee his decision to change career paths from private practice to becoming a Wasatch County Prosecutor and eventually the Wasatch County Attorney. Mr. Low explained that his desire to become a judge arises from his knowledge that a judge can affect people's lives in a positive way. He stated that if he is confirmed as a judge he will strive to bring honor and respect to the judicial nominating commission, Governor Herbert, and others who have helped him along the path to becoming a judge.

Chair Jenkins stated that the Committee looks in depth in the candidate's life, and he is impressed with Mr. Low's apparent desire to become a judge for the right reasons regardless of the challenges that come with the position.

Sen. Hillyard asked Mr. Low if his role as a prosecutor would bias him toward the prosecution and if he could become more balanced as a judge. Mr. Low stated that he handled many criminal defense cases in his early career and also had experience with poverty and substance abuse through his position as an LDS bishop, and he expressed that these experiences will allow him to see the whole picture of a person's life. He stated that he recognizes those people who come before the court should be treated fairly and with respect.

Sen. Hillyard inquired how Mr. Low would handle the transition from criminal law to family law, especially divorce and custody cases. Mr. Low stated that he has substantial experience with family law through his private practice, and he acknowledged that family law is difficult and requires reflection for each case to determine how the outcome will affect the family involved.

Sen. Hillyard asked if Mr. Low finds it appropriate for an older child to be interviewed by a judge outside of the presence of an attorney. Mr. Low answered that through the course of his practice he has been on both sides of the issue, and he stated that if both attorneys desire the child to speak with him, as the judge, he would consider it.

Sen. Hillyard stated that there is often contention in pro se cases and inquired how Mr. Low would handle those situations in a court room. Mr. Low stated that he has not experienced contentious situations in his court experience, but he said that he will listen to those people who come before him to let them know that they have been heard and then explain the law to them.

Sen. Hillyard asked about how Mr. Low, as a judge, could contribute to lowering the cost to the public to participate in the judicial system. Mr. Low stated that as a judge he would encourage summary judgement. Sen. Hillyard suggested that as a judge Mr. Low could control costs by utilizing various media technology and giving sanctions to attorneys who muddle the system.

Sen. Hillyard asked about how Mr. Low and his family will cope with the social seclusion that comes with being a judge. Mr. Low responded that he realizes that becoming a judge will result in a qualitative life change and hopes that he has prepared his family well enough for that change.

Sen. Hillyard inquired about how Mr. Low would handle imposing the death penalty as a judge. Mr. Low stated that he has been involved in five murder cases in his career. He expressed that he has never been ashamed of pursuing the death penalty and stated that it is appropriate under certain circumstances.

Sen. Greiner inquired how Mr. Low will deal with cultural differences in the courtroom, especially issues arising from illegal immigration, and how Mr. Low's Spanish-speaking ability will assist him as a judge. Mr. Low stated that he was often frustrated as a prosecutor with illegal immigrants being deported after prosecution, only to return and commit more crimes. He remarked that he has had experiences with immigrants in his personal life and understands that cultural differences can cause issues, but believes understanding can come through education. He also stated that his Spanish-speaking ability will not be used in the courtroom, but it will benefit him through his understanding of Hispanic culture.

Sen. Mayne inquired what Mr. Low has learned through his experience in legal practice and how his temperament has changed through his career. He stated that early in his career he believed he was solely responsible for the outcome of all his cases, but he now understands that his job ends at a certain point, then responsibility lies with others. He observed that he can only do the best he can and let others handle their own responsibilities.

President Waddoups remarked that, during a personal conversation with a judge, the judge stated that steps can be taken to reach a desired outcome in a case. President Waddoups inquired how Mr. Low would deal with the temptation to become an activist judge. Mr. Low stated that as a judge he would strive to be right and does not want to shape outcomes to his desire. He stated that through his litigation experience he wants cases to be decided by the law. He also said that he has prosecuted others for taking the law into their own hands; and, as a moral principle, he could not take the law into his own hands while having prosecuted others for the same action.

President Waddoups inquired if there is anything in Mr. Low's background that if it were generally known would be an embarrassment to the state or would disqualify him from being a judge. Mr. Low stated that there is not.

Sen. Jenkins asked how Mr. Low will deal with the public's lack of access to the court and the public's frustration with court experiences. Mr. Low stated his motto has been and will be "be a can do lawyer," meaning he will always seek to find ways to help people.

MOTION: Sen. Greiner moved to recommend favorably to the full Senate that Mr. Low be confirmed as a judge in the Fourth District Court. The motion passed unanimously.

3. Other Items / Adjourn

MOTION: Sen. Greiner moved to adjourn. The motion passed unanimously.

Chair Jenkins adjourned the meeting at 10:19 p.m.